

## § 760.109

## 7 CFR Ch. VII (1–1–14 Edition)

be eligible to receive benefits under this part.

(f) The direct attribution provisions in part 1400 of this title apply to ELAP, LFP, LIP, SURE, and TAP for 2009 and subsequent years. Under those rules, any payment to any legal entity will also be considered for payment limitation purposes to be a payment to persons or legal entities with an interest in the legal entity or in a sub-entity. If any such interested person or legal entity is over the payment limitation because of direct payment or their indirect interests or a combination thereof, then the payment to the actual payee will be reduced commensurate with the amount of the interest of the interested person in the payee. Likewise, by the same method, if anyone with a direct or indirect interest in a legal entity or sub-entity of a payee entity exceeds the AGI levels that would allow a participant to directly receive a payment under this part, then the payment to the actual payee will be reduced commensurately with that interest. For all purposes under this section, unless otherwise specified in part 1400 of this title, the AGI figure that will be relevant for a person or legal entity will be an average AGI for the three taxable years that precede the most immediately preceding complete taxable year, as determined by CCC.

[74 FR 31571, July 2, 2009, as amended at 74 FR 46673, Sept. 11, 2009]

### § 760.109 Misrepresentation and scheme or device.

(a) A participant who is determined to have deliberately misrepresented any fact affecting a program determination made in accordance with this part, or otherwise used a scheme or device with the intent to receive benefits for which the participant would not otherwise be entitled, will not be entitled to program payments and must refund all such payments received, plus interest as determined in accordance with part 792 of this chapter. The participant will also be denied program benefits for the immediately subsequent period of at least 2 crop years, and up to 5 crop years. Interest will run from the date of the original disbursement by FSA.

(b) A participant will refund to FSA all program payments, plus interest, as determined in accordance with part 792 of this chapter, provided however, that in any case it will run from the date of the original disbursement, received by such participant with respect to all contracts or applications, as may be applicable, if the participant is determined to have knowingly done any of the following:

- (1) Adopted any scheme or device that tends to defeat the purpose of the program,
- (2) Made any fraudulent representation, or
- (3) Misrepresented any fact affecting a program determination.

### § 760.110 Appeals.

(a) *Appeals.* Appeal regulations set forth at parts 11 and 780 of this title apply to this part.

(b) *Determinations not eligible for administrative review or appeal.* FSA determinations that are not in response to a specific individual participant's application are not to be construed to be individual program eligibility determinations or adverse decisions and are, therefore, not subject to administrative review or appeal under parts 11 or 780 of this title. Such determinations include, but are not limited to, application periods, deadlines, coverage periods, crop years, fees, prices, general statutory or regulatory provisions that apply to similarly situated participants, national average payment prices, regions, crop definition, average yields, and payment factors established by FSA for any of the programs for which this subpart applies or similar matters requiring FSA determinations.

### § 760.111 Offsets, assignments, and debt settlement.

(a) Any payment to any participant under this part will be made without regard to questions of title under State law, and without regard to any claim or lien against the commodity, or proceeds, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings in part 792 of this title apply to payments made under this part.

## Farm Service Agency, USDA

## § 760.201

(b) Any participant entitled to any payment may assign any payment(s) in accordance with regulations governing the assignment of payments in part 1404 of this title.

### § 760.112 Records and inspections.

(a) Any participant receiving payments under any program in ELAP, LFP, LIP, SURE, or TAP, or any other legal entity or person who provides information for the purposes of enabling a participant to receive a payment under ELAP, LFP, LIP, SURE, or TAP, must:

(1) Maintain any books, records, and accounts supporting the information for 3 years following the end of the year during which the request for payment was submitted, and

(2) Allow authorized representatives of USDA and the Government Accountability Office, during regular business hours, to inspect, examine, and make copies of such books or records, and to enter the farm and to inspect and verify all applicable livestock and acreage in which the participant has an interest for the purpose of confirming the accuracy of information provided by or for the participant.

(b) [Reserved]

### § 760.113 Refunds; joint and several liability.

(a) In the event that the participant fails to comply with any term, requirement, or condition for payment or assistance arising under ELAP, LFP, LIP, SURE, or TAP and if any refund of a payment to FSA will otherwise become due in connection with this part, the participant must refund to FSA all payments made in regard to such matter, together with interest and late-payment charges as provided for in part 792 of this chapter provided that interest will in all cases run from the date of the original disbursement.

(b) All persons with a financial interest in an operation or in an application for payment will be jointly and severally liable for any refund, including related charges, that is determined to be due FSA for any reason under this part.

### § 760.114 Minors.

A minor child is eligible to apply for program benefits under ELAP, LFP, LIP, SURE, or TAP if all the eligibility requirements are met and the provision for minor children in part 1400 of this title are met.

### § 760.115 Deceased individuals or dissolved entities.

(a) Payments may be made for eligible losses suffered by an eligible participant who is now a deceased individual or is a dissolved entity if a representative, who currently has authority to enter into a contract, on behalf of the participant, signs the application for payment.

(b) Legal documents showing proof of authority to sign for the deceased individual or dissolved entity must be provided.

(c) If a participant is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly authorized representatives must sign the application for payment.

### § 760.116 Miscellaneous.

(a) As a condition to receive benefits under ELAP, LFP, LIP, SURE, or TAP, a participant must have been in compliance with the provisions of parts 12 and 718 of this title, and must not otherwise be precluded from receiving benefits under those provisions or under any law.

(b) Rules of the Commodity Credit Corporation that are cited in this part will be applied to this subpart in the same manner as if the programs covered in this subpart were programs funded by the Commodity Credit Corporation.

## Subpart C—Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program

SOURCE: 74 FR 46673, Sept. 11, 2009, unless otherwise noted.

### § 760.201 Applicability.

(a) This subpart establishes the terms and conditions under which the